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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194-3657-02]

RIN 0648-XF062

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; Swordfish General Commercial permit retention limit inseason adjustment for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions.

SUMMARY: NMFS is adjusting the Swordfish (SWO) General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for January through June of the 2017 fishing year, unless otherwise later noticed. The SWO General Commercial permit retention limit in each of these regions is increased from the regulatory default limits to six swordfish per vessel per trip. The SWO General Commercial permit retention limit in the Florida SWO Management Area will remain unchanged at the default limit of zero swordfish per vessel per trip. These adjustments apply to SWO General Commercial permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted SWO General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective from January 1, 2017, through June 30, 2017.

FOR FURTHER INFORMATION CONTACT: Rick Pearson or Randy Blankinship, 727-824-5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic swordfish quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented by the United States into two equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category, according to the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

ICCAT Recommendation 13-02 set the North Atlantic swordfish total allowable catch (TAC) at 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw

(3,907 mt ww) per year. The Recommendation also included an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limited underharvest carryover to 15 percent of a contracting party's baseline quota. Thus, the United States could carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest. A new Recommendation was adopted at the 2016 ICCAT annual meeting, maintaining the provisions related to quota, the transfer to Mauritania, and the carryover limit. Absent adjustments, the codified baseline quota is 2,937 mt dw for the directed fishery in 2017, split equally (1,468.5 mt dw) between two semi-annual periods in 2017 (January through June, and July through December). We anticipate, however, that the 2017 adjusted North Atlantic swordfish quota will be 3,359.4 mt dw (equivalent to the 2016 adjusted quota) when we adjust the quota. At this time, given the extent of underharvest in 2016, we anticipate again carrying over the maximum allowable 15 percent (440.6 mt dw) which, with the Mauritania transfer, would result in a final adjusted North Atlantic swordfish quota for the 2017 fishing year equal to that from last year 3,359.4 mt dw ($2,937.6 - 18.8 + 440.6 = 3,359.4$ mt dw). Also as in past years, we anticipate allocating from the adjusted quota, 50 mt dw to the Reserve category for inseason adjustments and research, and 300 mt dw to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, per § 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw for the directed fishery, which would be split equally (1,504.7 mt dw) between two semi-annual periods in 2017 (January through June, and July through December).

Adjustment of SWO General Commercial Permit Vessel Retention Limits

The 2017 North Atlantic swordfish fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas, begins on January 1, 2017. Landings attributable to the SWO General Commercial permit are counted against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through December 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the SWO General Commercial permit are: (1) Northwest Atlantic region – three swordfish per vessel per trip; (2) Gulf of Mexico region – three swordfish per vessel per trip; (3) U.S. Caribbean region – two swordfish per vessel per trip; and, (4) Florida SWO Management Area – zero swordfish per vessel per trip. The default retention limits apply to SWO General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels when fishing on non for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the SWO General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six swordfish per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: the usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock; the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end

of the fishing year; the estimated amounts by which quotas for other categories of the fishery might be exceeded; effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; variations in seasonal distribution, abundance, or migration patterns of swordfish; effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and, review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

NMFS has considered these criteria as discussed below and their applicability to the SWO General Commercial permit retention limit in all regions for January through June of the 2017 North Atlantic swordfish fishing year, and has determined that the SWO General Commercial permit vessel retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a SWO General Commercial permit or HMS Charter/Headboat permit (when on a non for-hire trip) should be increased from the default levels that would otherwise automatically become effective on January 1, 2017.

Among the regulatory criteria for inseason adjustments to retention limits is the requirement that NMFS consider the “effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments.” Thus, a principal consideration in deciding whether to increase the retention limit is the objective of providing opportunities to harvest the full North Atlantic directed swordfish quota without exceeding it based upon the 2006 Consolidated HMS FMP goal to, consistent with other objectives of this FMP, “manage Atlantic HMS fisheries for continuing

optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.” Consistent with the FMP and its amendments, it is also important for NMFS to continue to provide protection to important swordfish juvenile areas and migratory corridors.

The regulatory criteria also require NMFS to consider the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year. In considering these criteria and their application here, NMFS examined electronic dealer reports, which provide accurate and timely monitoring of landings, and considered recent landing trends and information obtained from biological sampling and monitoring of the North Atlantic swordfish stock. A six swordfish per vessel per trip limit for SWO General Commercial permit holders was in effect in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for the entire 2016 fishing season as a result of actions adjusting those limits upwards in January and July (80 FR 81770 and 81 FR 38966). Even with these higher retention limits, directed swordfish landings for the January through June 2016 semi-annual period were approximately 465.7 mt dw (30.9 percent of the adjusted directed sub-quota). Preliminary 2016 total annual directed swordfish landings through October 31, 2016, are approximately 844.7 mt dw, or 28.1 percent of the 3,009.4 mt dw annual adjusted directed swordfish quota.

The directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded during 2017. This

information indicates that sufficient directed swordfish quota should be available from January 1 through June 30, 2017, at the higher retention levels, within the limits of the scientifically-supported TAC and consistent with the goals of the FMP.

The regulatory criteria for inseason adjustments also require us to consider the estimated amounts by which quotas for other categories of the fishery might be exceeded. Based upon recent landings rates from dealer reports, an increase in the vessel retention limit for SWO General Commercial permit holders is not likely to cause quotas for other categories of the fishery to be exceeded as the directed category quota has been significantly underharvested in recent years and landings trends are not expected to vary significantly in 2017. Similarly, regarding the criteria that NMFS consider the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota, NMFS expects there to be sufficient swordfish quota for 2017, and thus increased catch rates in these three regions would not be expected to preclude vessels in the other region (the Florida SWO Management Area) from having a reasonable opportunity to harvest a portion of the overall swordfish quota. This issue is largely moot, however, because the retention limit in the Florida Swordfish Management Area is set at zero for biological and ecological reasons related to the stock, as discussed below.)

Finally, in making adjustments to the retention limits NMFS must consider variations in seasonal distribution, abundance, or migration patterns of swordfish, and the availability of swordfish on the fishing grounds. With regard to swordfish abundance, the 2016 report by ICCAT's Standing Committee on Research and Statistics indicated that

the North Atlantic swordfish stock is not overfished ($B_{2011}/B_{msy} = 1.14$), and overfishing is not occurring ($F_{2011}/F_{msy} = 0.82$). Increasing the retention limits for this U.S. handgear fishery is not expected to affect the swordfish stock status determination because any additional landings would be within the established overall U.S. North Atlantic swordfish quota allocation recommended by ICCAT. Increasing opportunity beginning on January 1, 2017, is also important because of the migratory nature and seasonal distribution of swordfish. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for swordfish may be constrained by the short amount of time the swordfish are present as they migrate.

NMFS also has determined that the retention limit will remain at zero swordfish per vessel per trip in the Florida SWO Management Area at this time. As discussed above, NMFS considered consistency with the 2006 HMS FMP and its amendments and the importance for NMFS to continue to provide protection to important swordfish juvenile areas and migratory corridors. As described in Amendment 8 to the 2006 Consolidated HMS FMP (78 FR 52012), the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized swordfish, the potential for larger

numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida SWO Management Area and other regional retention limits. This action therefore maintains a zero-fish retention limit in the Florida Swordfish Management Area.

These adjustments are consistent with the 2006 Consolidated HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the swordfish fishery closely during 2017 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no swordfish were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of swordfish, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that available quota is not exceeded or to enhance fishing opportunities.

Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access

<http://www.nmfs.noaa.gov/sfa/hms/species/swordfish/landings/index.html> for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public

comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in swordfish landings, the availability of swordfish on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available swordfish quota, stock abundance, fishery performance in recent years, and the availability of swordfish on the fishing grounds, among other considerations, adjustment to the SWO General Commercial permit retention limits from the default levels as discussed above is warranted, except that it maintains a zero-fish retention limit in the Florida SWO Management Area. Analysis of available data shows that adjustment to the swordfish daily retention limit from the default levels would result in minimal risks of exceeding the ICCAT-allocated quota. NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the “Atlantic HMS Breaking News” website at http://www.nmfs.noaa.gov/sfa/hms/news/breaking_news.html. Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely and unnecessarily affect those SWO General Commercial permit holders and HMS Charter/Headboat permit holders that would otherwise have an opportunity to harvest more than the default retention limits of three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two swordfish per vessel per trip in the U.S. Caribbean region. Further, any delay

beyond January 1, 2017, the start of the first semi-annual directed fishing period, could exacerbate the problem of low swordfish landings and subsequent quota rollovers.

Limited opportunities to harvest the directed swordfish quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on January 1, 2017, to allow all of the affected sectors to benefit from the adjustment during the relevant time period, which could pass by for some fishermen if the action is delayed for notice and public comment, and to not preclude fishing opportunities for fishermen, particularly in the Gulf of Mexico and U.S. Caribbean regions, who have access to the fishery during a short time period because of seasonal fish migration. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 9, 2016.

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